SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 287.

R. A. WILLIAMS, Plaintiff in Error.

vs.

EDGAR FEARS, Sheriff, and R. B. AYCOCK, Jailer, Defendants in Error.

In Error to the Supreme Court of Georgia.

BRIEF OF J. M. TERRELL, OF COUNSEL FOR THE STATE OF GEORGIA.

STATEMENT OF THE CASE.

On January 13th, 1900, a warrant was issued by the County Court of Morgan County, Georgia, based upon an affidavit made by L. T. Penick, Tax Collector of that County, charging the plaintiff in error, R. A. Williams, with the offense of acting as an Emigrant Agent in Morgan County without a license. The warrant was duly executed by the proper officer of that county, and Williams was arrested thereunder and placed in the county jail, upon his failure to give bond, pending his trial before the County Court. While thus being held he made application to the Judge of the Superior Court of that County for a writ of *habeas corpus*, alleging, amongst other things, that the warrant under which he was arrested charged him with violating the General Tax Act of 1898, which imposes "upon each emigrant agent or employee of such agent

doing business in this State the sum of five hundred dollars for each county in which such business is conducted," and that this provision of the General Tax Act was in conflict with the Interstate Commerce Clause of the U. S. Constitution, also paragraph 5, section 9, article 1, and also paragraph 1, section 2 of article 4, and also with the Fourteenth amendment of the Federal Constitution. The writ of *habeas corpus* was duly issued, and upon the return thereof the questions arising thereunder were heard and determined by the Court, and Williams was remanded to the custody of the officer having him in charge to be held until discharged by due process of law. To this ruling of the Superior Court Williams excepted and carried the case to the Supreme Court of Georgia, where on the 11th day of April, 1900, a judgment was rendered affirming the judgment of the Superior Court.

EXTRACTS FROM THE GEORGIA LAWS.

The title of the General Tax Act of 1898 is as follows: "An Act to levy and collect a tax for the support of the State government and the public institutions; for educational purposes in instructing children in the elementary branches of an English education only; to pay the interest on the public debt; and to pay maimed Confederate soldiers and widows of Confederate soldiers such amounts as are allowed them by law for each of the fiscal years 1899 and 1900; to prescribe what persons, professions and property are liable to taxation; to prescribe the methods of collecting and receiving said taxes; to prescribe the method of ascertaining the property of the State subject to taxation; to prescribe additional questions to be propounded to taxpayers, and to provide penalties and forfeitures for non-payment of taxes; to prescribe how the oath of taxpayers shall be administered, and provide penalties for violation thereof, and for other purposes."

The 1, 2, 3, 4, 5, 6, 7, 8 and 9 paragraphs of section 2 levy an occupation tax upon lawyers, doctors, photographers, auctioneers, keepers of pool and billard tables, traveling vendors of patent or proprietary medicines, special nostrums, jewelry, paper, soap, or other merchandise, local insurance agents, etc. Paragraph 10 is as follows:

"Upon each emigrant agent, or employer or employee of such agent, doing business in this State, the sum of five hundred dollars for each county in which the business is conducted."

Section 4 of the General Tax Act is as follows:

"Be it further enacted by the authority aforesaid, That the taxes provided for in paragraphs 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 of section 2 of this Act shall be paid in full for the fiscal years for which they are levied to the tax-collectors of the counties where such vocations are carried on at the time of commencing to do business specified in said paragraphs. Before any person taxed by paragraphs 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 of section 2 of this Act shall be authorized to carry on said business they shall go before the Ordinary of the county in which they propose to do business and register their names, places of business, and at the same time pay their taxes to the tax-collector; and it shall be the duty of said Ordinary to immediately notify the Comptroller-General and the tax-collector. Any person failing to register with the Ordinary, or, having registered, failing to pay the tax as herein required, shall be liable to indictment for misdemeanor, and, on conviction, shall be fined not less than double the tax, or be imprisoned as prescribed by section 1039 of volume 3 of the Code of 1895, or both, in the discretion of the court. One-half of said fine shall be applied to the payment of the tax, and the

other to the fund of fines and forfeitures for use of officers of court."

BRIEF OF ARGUMENT.

I.

As construed by the Supreme Court of Georgia, the term "emigrant agent," as used in the General Tax Act of 1898, means a person engaged in hiring laborers in Georgia to be employed beyond the limits of that State.—Printed record, page 13. There is nothing in the record to show that Williams, the plaintiff in error, was not a citizen of Georgia; the presumption, therefore is that he was a citizen and resident of Georgia.

II.

The question presented by the record is whether paragraph 10 of section 2 of the General Tax Act, which levies an occupation tax of $500 per annum upon emigrant agents contravenes the United States Constitution, and for that reason, so far as the same affects the plaintiff in error, is void. The Supreme Court of Georgia held that there was no conflict, and the Court, through Mr. Justice Cobb, discussed in an able opinion every phase of the question.—P. R., pages 13 to 21. The Court also reviewed and affirmed the decision of the Supreme Court of Georgia in a somewhat similar case in 59 Ga. 535.

III.

The provision of the tax act in question does not regulate or interfere with interstate commerce. It is nothing more than the exercise of the taxing power of the State in imposing upon the occupation of the citizen a tax, and is

not a regulation of or restriction of any business which is properly comprehended within the terms "commerce among the States." The argument of Mr. Justice Cobb on this question ably and clearly states the law, and the authorities cited by him fully sustain the position.—P. R., pages 16 to 19.

The courts and text writers have uniformly upheld such an exercise of the taxing power to be constitutional. The case of Joseph V. Randolph, 71 Ala. 599, which was relied upon very largely by the plaintiff in error when this case was before the Supreme Court of Georgia, may be easily distinguished from this case. The question there involved the police and not the taxing power. The opinion of the Court by Mr. Justice Somerville recognizes the correctness of this position in the following language, on page 507 of 71 Ala.: "If we could see that the legislative purpose was merely to impose a license tax upon persons engaged in the business or occupation of hiring persons to leave the State, we would not be justified in declaring the law violative of the Constitution because it incidentally affected the right of free egress from the State. A constitutional right is often affected in this way by the taxing power, without a repugnancy which will vitiate the tax."

IV.

If the term "interstate commerce" includes such a business as that of an emigrant agent, which is not conceded, then paragraph 10 of the Tax Act of 1898 would still be constitutional.

In the case of Osborn *v.* Mobile, 16 Wall 499, where the Southern Express Company, a Georgia corporation doing business in Mobile, Alabama, contested the constitutionality of an ordinance of that city, which prescribed

that every express company doing business in that city, and having a business extending beyond the limits of the State, should pay an annual license of $500, which should be deemed a first grade license; that every company doing business within the limits of the State should take out a license called a second grade license, and pay $100, and that every company doing business within the city should take out a third grade license and pay therefor $50, this Court held that the ordinance was not repugnant to the Constitution as a regulation of interstate commerce. In delivering the opinion of the Court, Mr. Chief Justice Chase says, on page 482:

"But it is not necessary to resort to the principles maintained in these cases for the decision of the case now before us. It comes directly within the rules laid down in the case relating to the tax upon the gross receipts of railroads. In that case we said: 'It is not everything that affects commerce that amounts to a regulation of it within the meaning of the Constitution.' We admitted that the 'ultimate effect' of the tax on the gross receipts might 'be to increase the cost of transportation,' but we held that the right to tax gross receipts, though derived in part from interstate transportation, was within the general 'authority of the States to tax persons, property, business or occupations within their limits.' The license tax in the present case was upon a business carried on in the city of Mobile. The business license included transportation beyond the limits of the State, or rather the making of contracts, within the State, for such transportation beyond it. It was with reference to this feature of the business that the tax was, in part, imposed; but it was no more a tax upon interstate commerce than a general tax on drayage would be because the licensed drayman might sometimes be employed in hauling goods to vessels to be transported beyond the limits of the State."

In the case of Wiggins Ferry Co. v. East St. Louis, 107 U. S. 365, this court sustained as constitutional the charter and an ordinance thereunder imposing a license fee upon the keepers of ferries living in the State for boats owned by them and used in ferrying passengers and goods from a landing in the State, across a navigable river, to a landing in another State. In discussing the question Mr. Justice Woods, speaking for the Court, on page 373, says:

"The levying of a tax upon vessels or other water-craft or the exaction of a license fee by the State within which the property subject to the exaction has its *situs*, is not a regulation of commerce within the meaning of the Constitution of the United States. Gibbons v. Ogden, 9 Wheat. 1; Passenger Cases, 7 How. 283; Morgan v. Parham, 16 Wall 471. * * * * In all the cases just cited the right of a State to tax a ship owned by one of her citizens and having its *situs* within a State, although used in foreign commerce or in commerce between the States, was distinctly recognized. Thus, in Passenger Cases, it was said by Mr. Justice McLean; 'A State cannot regulate foreign commerce but it may do many things which more or less affect it. It may tax a ship or other vessel used in commerce, the same as other property owned by its citizens. A State may tax the stages in which the mail is transported, but this does not regulate the conveyance of the mail any more than taxing a ship regulates commerce, and yet, in both instances, the tax on the property in some degree affects its use.'"

In Ficklen v. Shelby county, 145 U. S. 1, this Court sustained an Act of the Tennessee Legislature imposing a business tax upon brokers making sales on behalf of principals residing in other States. The language used by Mr. Chief Justice Fuller, on page 21, is applicable to the case at bar, and indicates clearly that it is perfectly competent for a State legislature in the exercise of its taxing power to impose the occupation tax in question:

"No doubt can be entertained of the right of a State legislature to tax trades, professions and occupations, in the absence of inhibition in the State Constitution in that regard; and where a resident citizen engages in general business subject to a particular tax, the fact that the business done chances to consist, for the time being, wholly or partially in negotiating sales between resident and non-resident merchants, of goods situated in another State, does not necessarily involve the taxation of interstate commerce, forbidden by the Constitution."

V.

The contention that the provision of the Tax Act in question is contrary to other paragraphs of the Constitution and to the Fourteenth Amendment is not well founded, as will appear by reference to the authorities above cited. The Act does not in the slightest degree impair the rights of the citizen, neither does it impose a tax upon his right to leave the State, neither does it deny to any person the equal protection of the laws. The reasoning of Judge Bleckley in the case of Shepperd *v.* Commissioners, 59 Ga., on page 536, and quoted by Mr. Justice Cobb on pages 19 and 20 of the printed record, fully sustains this position. The following authorities will be found in point: New York *v.* Miln, 11 Peters 102; Slaughter House Cases, 16 Wall. 63; License Cases, 5 How. 504; Passenger Cases, 7 How. 283; License Tax Cases, 5 Wall. 471; Crandall *v.* Nevada, 6 Wall. 35.

VI.

No question was raised in the Georgia courts as to the amount of the tax being excessive or prohibitory, and the record presents no such question.

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